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5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF WASHINGTON

7 UNITED STATES OF AMERICA, }
8 Defendant, } NO. CR-06-2039-WFN
9 -vs- } ORDER
10 }
11 JUBENAL MEDINA CEBALLOS, }
12 Movant. }

13 Pending before the Court is Movant's Motion Objecting to Court's Order, presented
14 by Mr. Ceballos *pro se* (Ct. Rec. 112). The Court has reviewed the record and Motion, as
15 well as the applicable law. For the reasons stated below, the Motion is denied.

16 **I. BACKGROUND**

17 On September 15, 2004, Mr. Ceballos was indicted for violation of 21 U.S.C. § 846
18 and 841(a), conspiracy to distribute and two counts of distribution. A jury found Mr.
19 Ceballos guilty on Counts 1 and 3 and not guilty of Count 2. Mr. Ceballos was sentenced
20 to 151 months imprisonment and 5 years supervised release. Mr. Ceballos raised several
21 issues on appeal. The Ninth Circuit affirmed the District Court. On September 17, 2008, Mr.
22 Ceballos filed a Motion to Vacate, Set Aside or Correct Sentence pursuant to 28 U.S.C.
23 § 2255 and argued that his sentence was unconstitutional because he received ineffective
24 assistance of counsel during sentencing and that the Court erred in applying the obstruction
25 of justice enhancement (Ct. Rec. 86). On December 1, 2008, the Assistant United States
26 Attorney filed a Response (Ct. Rec. 95). On January 26, 2009, Mr. Ceballos filed a Reply

1 to the Government's response which included one additional claim, that the use of perjured
2 testimony to obtain his conviction violated his right to due process (Ct. Rec. 101). The
3 Government offered no additional response. On May 7, 2009, the Court denied Mr.
4 Ceballos's § 2255 Motion with prejudice and denied Movant a Certificate of Appealability
5 (Ct. Rec. 103). On June 9, 2009, Mr. Ceballos filed a Petition for Issuance of Certificate of
6 Appealability (Ct. Rec. 105). The Court construed Mr. Ceballos' Petition as a motion for
7 reconsideration because the Court had inadvertently neglected to address an issue raised in
8 Mr. Ceballos' reply to the original § 2255 Motion. The Court denied the motion on the merits
9 and denied Mr. Ceballos a certificate of appealability. (Ct. Rec. 107).

10 **II. ANALYSIS**

11 Mr. Ceballos argues that the Court lacked jurisdiction to consider the issue raised in
12 his reply because the Court lacked jurisdiction. Rule 60(c) states that: "A motion under
13 Rule 60(b) must be made within a reasonable time—and for reasons (1), (2), and (3) no more
14 than a year after entry of the judgment or order or the date of the proceeding." Mr. Ceballos'
15 Petition was filed just over a month following the Court's order dismissing his § 2255 Motion
16 with prejudice. Since the Court considered Mr. Ceballos' Petition for a Certificate of
17 Appealability as a motion for reconsideration under Rule 60(b)(1), this is well within the year
18 statute of limitations set out in the rules. Thus, the Court properly asserted jurisdiction.

19 **III. CERTIFICATE OF APPEALABILITY**

20 A certificate of appealability may be issued by this Court or a circuit justice if "the
21 applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C.
22 § 2253(C)(2) (West 2009). In order to satisfy this standard, an applicant must show that
23 "reasonable jurists would find the district Court's assessment of the constitu-tional claims
24 debatable or wrong." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Based on the Court's
25 preceding analysis, the Court concludes that jurists of reason would not differ with the
26 Court's conclusion that Mr. Ceballos has failed to make a substantial showing that he

1 was denied a constitutional right. Thus, a certificate of appealability should not issue.
2 Accordingly,

3 **IT IS ORDERED** that Mr. Ceballos's Motion Objecting to Court's Order, filed
4 August 5, 2009, **Ct. Rec. 112**, is **DENIED**.

5 The District Court Executive is directed to:

- 6 • File this Order and provide copies to counsel;
7 • Inform the Ninth Circuit Court of Appeals that if the Movant files a Notice of
8 Appeal, that a certificate of appealability is **DENIED**.

9 **DATED** this 13th day October of 2009.

10
11 s/ Wm. Fremming Nielsen
12 10-07 WM. FREMMING NIELSEN
SENIOR UNITED STATES DISTRICT JUDGE